IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRTEENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE D.S.R.VARMA

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WRIT PETITION NO : 25838 of 2000

Between:

M/s.Rayalaseema Alkalies & Allied Chemicals Ltd.,

Rep.by its Sr. Vice-President, P.Krishna Rao

S/o P.V.S.Murthy, aged 51 years,

R/o Gondiparla, Kurnool District.

..... PETITIONER

AND

1. The A.P.Transmission Corporation Ltd.,

Rep.by its Managing Director,

Central Zone, Vidyuth Soudha,

Hyderabad.

2. The Superintending Engineer (Operations),

A.P.Transmission Corporation Ltd.,

Kurnool.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the

circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus or any other appropriate Writ, Order or Direction declaring the proceedings of the 2nd respondent in letter No.SE(O) KNL/REV/JAO/HT/D.No.174/2000, dated 23.2.2000 as illegal, void and unenforceable and consequently direct the respondents to refund the amounts paid towards part of demand made in the impugned letter.

Counsel for the Petitioner:MR.C.V.NAGARJUNA REDDY

Counsel for the Respondents: MR.M.SRIRAMULU REDDY (SC FOR APTRANSCO)

The Court made the following ORDER:

Heard both sides.

This writ petition is filed by the petitioner-company to declare the proceedings issued by the 2nd respondent in letter dated 23-02-2000 as illegal and arbitrary.

The relevant portion of the impugned letter, which is required to be noticed, runs thus:

> "In this connection, it is to state that as per M.O.U conditions, the sharing of actual delivered capacity shall be pro-rata with reference to the No. of shares held (i.e.,) the capacity sharing shall be proportional to the actual delivered capacity and net energy delivered at the inter connection point during the billing period. The demand & Energy delivered shall be regulated on monthly basis by the party of the first part (M/s.APGPCL).
>
> While reviewing the allocation it is noticed that M/s.A.P.G.P.C.L. has allocated demand in excess of your eligibility contrary to the MOU conditions. As per M.O.U conditions, you are entitled for demand as stated hereunder as against demand already allocated."

The dispute is with regard to the Current Consumption billing for the months of August and September, 1998 and August, October and November, 1999.

As per the Power Supply Agreement entered into by the petitioner-company with the erstwhile APSEB, the petitioner's contracted demand is 600 KVA and if the consumption falls below the minimum charges, the energy charges will be

calculated at 50 Units per each KVA of 80% of the Contracted Maximum Demand (CMD) or Recorded Demand, whichever is higher.

It is explicit from clause-7 of B.P.Ms.No.62 (Operation & Commercial), dated 28-12-1998 that if the recorded demand exceeds the CMD, the petitioner has to pay twice the normal demand charges on the excess portion of the Maximum Demand. In fact, the said notification applies to the disputed amount for the period as mentioned in the impugned letter.

Clause-7 of the said B.P.Ms.No.62 reads thus:

> "If in any month the recorded maximum demand of the consumer exceeds his contracted demand, that portion of the demand in excess of the contracted demand will be billed at twice the normal charges."

A bare reading of the abovesaid clause-7 of B.P.Ms.No.62 dated 28.12.1998 makes it clear that the recorded maximum demand if exceeds the contracted demand, only that portion of the demand in excess of the contracted demand will be billed at twice the normal charges. The crucial conditions in the said clause are firstly, there must be a demand in excess of CMD and secondly, the excess CMD will be billed at twice the normal charges. In fact, the same was the situation in 1996 and it was made clear through clause-7 of B.P.Ms.No.62, dated 28.12.1998, which is replicated in clause-7 of B.P.Ms.No.32, dated
29-07-1996.

This fact makes it clear that the stand of the respondents is that the excess demand, i.e., over and above the Contractual Maximum Demand will be billed at twice the normal charges. Perhaps, this is by way of penalty and the rate of it was explicit in both B.P.Ms.Nos.32 and 62 of 1996 and 1998 respectively and absolutely, there is no change in it.

Of course, there was a policy sometime back in 1989 and the same is contrary to the present principle enunciated in the notifications referred to hereinabove so far and that condition had become obsolete, defunct and not given any effect to.

It is further clear from the letter dated 17-08-2000, which was filed along with the writ affidavit before this Court, addressed by the Chief Engineer (Commercial & RAC) to

the petitioner that the penal charges were not applied for the energy charges. The energy charges have been billed on the basis of billing demand @ 50 Units per KVA of billing demand as tariff conditions.

The above said letter was addressed in the year 2000 and the same is in conformity with the notifications referred to hereinabove to the effect that the demand, over and above the contractual maximum demand shall be charged at twice the normal charges. Therefore, absolutely there is no need to interpret Clause-7 of the abovesaid notifications as the same has been explained by the respondents themselves. But from the impugned proceedings, the intention of the respondents is clear and they have revised the billing for two months in 1998 and three months in 1999 by levying energy charges and it was found that the respondents have allocated the demand in excess of the eligibility of the petitioner contrary to the MOU conditions and further, as per the MOU conditions, the petitioner is entitled to the demand as stated thereunder. The respondents have tried to justify their stand by issuing the letter dated 17-08-2000 stating as follows:

> "The Penal charges were not applied for the energy charges. The energy charges have been billed on the basis of billing demand @ 50 Units per KVA of billing demand as tariff conditions."

A bare reading of the letters dated 17-08-2000 and 23-02-2000 appears to be absolutely contrary to the very letter and spirit of B.P.Ms.No.62, dated 28-12-1998.

It is clear from the notifications viz., B.P.Ms.Nos.32 and 62 of the years 1996 and 1998 respectively, that the proportionate energy charges on the excess demand portion are not chargeable. This was the policy prevailing through B.P.Ms.No.353, dated 15-04-1989, but the same has become obsolete. Virtually, the respondents, contrary to their stand with regard to the tariff of the relevant period, gave a total go-bye to the conditions of the relevant year and reverted to the situation prevailed in 1989 as contemplated in clause-7 of B.P.Ms.No.353, which reads as under:

> "If in any month the recorded maximum demand of the consumer exceeds his contracted demand by more than 5% that portion of the demand in excess of the contracted demand and that portion

of the proportionate energy will be billed as follows:

Demand, Energy and Fuel cost adjustment charges will be billed at twice the normal charges."

Precisely, the above stand had become obsolete and ineffective by virtue of the introduction of a new policy in B.P.Ms.No.32 of 1996 and B.P.Ms.No.62 of 1998.

It is totally indiscernible as to how the respondents gave a go-bye to the conditions mentioned in B.P.Ms.No.62 of 1998 and reverted to the old conditions, which were not in force as on the date of issuing the impugned letter.

In my considered view, the revision of the tariff by the respondents through the impugned letter in accordance with the old policy in deviation to the new policy enunciated in B.P.Ms.No.62 of 1998 is totally uncalled for and hence, the same is arbitrary.

The learned Counsel for the petitioner further submitted that the petitioner was well within the limits in availing the power demand. But, the meter recorded excess reading because of its defectiveness, which was observed and evident from the variation in readings between the petitioner's check meter and the respondents' check meter. This defectiveness was there even in the months from August, 1999 to December, 1999.

The above is a factual aspect, which is expedient to be verified and revised if necessary, by taking the readings from the check meter and not from the defective meter.

In view of the above, the impugned letter is set aside and the respondents are directed to follow Clause-7 of B.P.Ms.No.62 of 1998 and also not to collect the proportionate energy charges on the excess demand portion. Consequently, the respondents shall revise the billing amount for the period referred to hereinabove and refund the excess amount collected, if any, to the petitioner. However, the petitioner is at liberty to pursue the other disputes relating to meter defect etc., before the appropriate forum.

The writ petition is accordingly allowed. There shall be no order as to costs.

(D.S.R.VARMA, J)

13th APRIL, 2005.

Kvni/krk

To

1. The Managing Director, A.P.Transmission Corporation Ltd.,

Central Zone, Vidyuth Soudha,

Hyderabad.

2. The Superintending Engineer (Operations),

A.P.Transmission Corporation Ltd.,

Kurnool.

3. Two CD copies.

THE HON'BLE MR JUSTICE D.S.R.VARMA

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DATE: 13-04-2005

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The Rule nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice on this, Wednesday, the thirteenth day of April, Two thousand and five.

ASSISTANT REGISTRAR.

// TRUE COPY //

SECTION OFFICER.

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